

5-3-4: VARIANCE PROCEDURES:

The following provisions shall apply in considering variances:

- A.** The commission shall consider variances to the terms of this title which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title will result in unnecessary hardship. A "variance" is a modification of the requirement of this title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setback, parking space, height of buildings or other zoning provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship.

Hardships shall not be self-imposed, but shall result from special site characteristics relating to the size, location, configuration or dimensions of the site or the placement of existing structures thereon, or from geographic, topographic or other physical conditions which render the site unique from other properties in the same zone or vicinity.

Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration. In acting upon a variance, the commission shall make a full investigation and shall only grant a variance upon finding that the following are true:

1. That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, which do not apply generally to other properties within the same zoning district.
2. That the exceptional or extraordinary circumstances in conjunction with a literal interpretation and application of the regulation would result in undue hardship by depriving the applicant of reasonable use and enjoyment of the property or of privileges enjoyed by the owners of other properties located in the same zoning district.
3. That the granting of the variance will not constitute a grant of special privilege.
4. That the granting of such relief will not be materially detrimental to the public health, safety or welfare, or interest or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.
5. That the granting of the variance will not be in conflict with the spirit and intent of the comprehensive plan and will not effect a change in zoning.

- B.** An application for a variance may be initiated by or at the request of a property owner. Such application shall be filed with the commission on forms prescribed by the commission accompanied by such data and information necessary to assure the fullest presentation of facts.
- C.** Prior to granting a variance, the commission shall conduct one public hearing in accordance with the procedures prescribed for conditional use permits, except that notice shall be provided only to property owners adjoining the property for which the variance request is made.
- D.** Whenever the commission grants or denies a variance, it shall specify:

 - 1.** The ordinance and standards used in evaluating the application;
 - 2.** The reasons for approval or denial; and
 - 3.** The actions, if any, that the applicant could take to obtain a permit.
- E.** Upon the granting of the variance, terms and conditions may be attached that:

 - 1.** Specify the nature and extent of relief being granted.
 - 2.** Minimize any adverse effect on neighboring properties or improvements.
- F.** The applicant or any affected person having an interest in real property within a three hundred foot (300') radius of the exterior boundaries of the subject property may appeal the decision of the commission pursuant to subsections [5-3-3](#) H and I of this chapter. (Ord. 527, 3-14-2005)

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- H.** The applicant or any affected person having an interest in real property within a three hundred foot (300') radius of the exterior boundaries of the subject property may appeal the decision of the commission provided written notice of such an appeal is filed with the city clerk within fifteen (15) days after the written decision of the commission is signed.
- I.** In reviewing an appeal pertaining to the conditional use permit, the council shall hold a de novo public hearing using the public hearing notice and procedures prescribed for the commission. The council may approve, disapprove or modify the action of the commission. (Ord. 527, 3-14-2005)